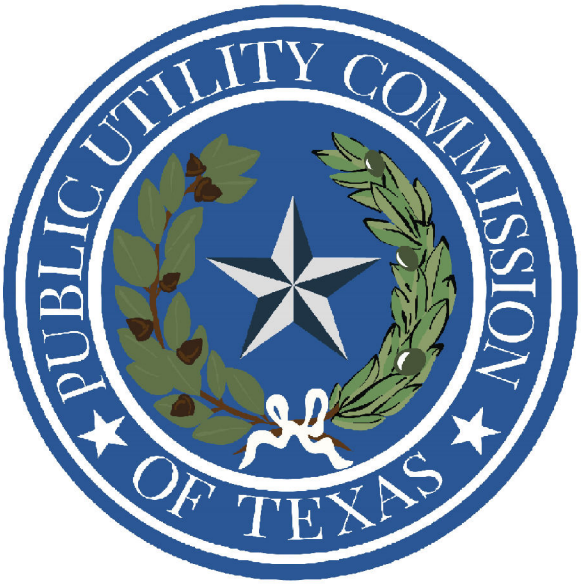

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REVIEW OF CERTAIN RETAIL ELECTRIC CUSTOMER PROTECTION RULES	**§ § §**	**BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS**

INITIAL COMMENTS OF COALITION OF COMPETITIVE RETAIL ELECTRIC PROVIDERS

The Coalition of Competitive Retail Electric Providers[1] (CCR) appreciates the opportunity to comment on Commission's proposal for publication. These proposed rule amendments purport to implement House Bill 16, relating to the regulation of certain retail electric products, and section 9 of Senate Bill 3, relating to preparing for, preventing, and responding to weather emergencies and power outages; increasing the amount of administrative and civil penalties, as adopted by the 87th Texas Legislature.

As such, Commission staff has proposed amendments to 16 TAC §§ 25.43, 25.471, 25.475, 25.479, and 25.498. Further, it proposes new substantive rule §25.499.

II. RESPONSE TO QUESTIONS

1. Should the maximum rate for provider of last resort service that is charged by a large service provider to a residential customer in proposed §25.43(m)(2)(A)(iii) and small and medium non-residential customers in proposed §25.43(m)(2)(B)(iv) include a safety threshold to prevent the energy charge from increasing by more than a certain percentage on a year-to-year basis? If so, what is an appropriate safety threshold?

No, the maximum rate for the Provider of Last Resort (POLR) service should not include a safety threshold to prevent the energy charge from increasing by more than a certain percentage on a year-to-year basis. POLR service is not meant to be a long term service for customers. Rather it is intended to serve as a safety net for customers whose REPs leave the

[1] The Coalition of Competitive Retailers supporting these comments are identified in Attachment One.

market unexpectedly and for which there may not be sufficient time for those customers to select an alternative provider. The Commission has adopted a set of rules that further incent POLR providers to charge a competitive rate to these customers instead of the POLR rate. As a result, it is highly unlikely that many customers who have been transitioned to a POLR provider are receiving service under this maximum POLR rate. The incentives for POLRs to charge a rate other than the rate reflected in §25.43(m)(2) are found in 25.43(s) and reflect a waiver of these otherwise required quarterly reports.

2. Do the acknowledgement of risk requirements in proposed §25.475(c)(3)(G) and §25.475(j) provide adequate customer protections for residential and small commercial customers that enroll in indexed retail electric products and retail electric products that allow for the pass-through of ancillary service charges? If not, should these products be prohibited for residential and small commercial customers?

PURA §39.001(c) specifically prohibits the Commission from making rules or issuing orders that regulate competitive electric services or prices except as authorized by PURA. Further, PURA §39.101(a) identifies specific customer safeguards including the right to safe, reliable, and reasonably priced electricity; to have bills presented in a clear format and in a language readily understandable by customers; and to have information as necessary concerning rates, key terms and conditions in a standard format that will permit comparisons between price and service offerings. A REP's decision to pass through ancillary service charges is a competitive decision. The competitive market will determine if such products will be purchased by the consumer. As a result, it is unnecessary for the Commission to prohibit a REP from including specific cost drivers in their product pricing.

The CCR supports the Acknowledgement of Risk disclosure as proposed in §25.475(c)(3)(G) and §25.475(j) as an acceptable method of ensuring that customers who

choose to enroll on an indexed product or a product that includes ancillary charges understand the pricing volatility risk associated with such products.

III. COMMENTS ON §25.43

The CCR generally supports the pricing formulas proposed in §25.43(m)(2)(A)(iii) and 25.43(m)(2)(B)(iv). However, the CCR suggests that the Commission consider having the 12 month period follow the calendar year instead of what appears to be the state's fiscal year. In both cases the LSP Energy charge would be the average of the actual RTSPPs for the customer's load zone for the previous 12-month period ending December 31 of the preceding year multiplied by the number of kWhs the customer used during that billing period and further multiplied by 125%. The move to a calendar year would simplify a customer's understanding of this rate calculation and would continue to allow for the requirement found in 25.43(j)(3) to be met while providing customers the most current information.

IV. COMMENTS ON §25.475

§25.475 (b)

(b)(2) – Contract documents

For clarity, and consistency with requirements found in 25.498(e), the definition of contract documents should also include the Prepaid Disclosure Statement (if applicable). CCR proposes the following:

> (2) **Contract Documents** – The TOS, EFL, YRAC, PDS (if applicable), and if applicable, the AOR.

(b)(5) – Fixed Rate Product

The CCR does not support staff's proposed change to the definition of "fixed rate product." The CCR also notes that the word "price" as defined in (b)(8), is only known or "fixed" at a specified level of usage, such as those shown on the EFL. Nothing in existing Commission rules requires REPs to present their rates in either a "bundled" (meaning inclusive of all recurring charges) or "unbundled" (meaning the specific line item identification of some or

all of the recurring charges) format, beyond the requirements to show a "price" as required by Commission rules at time of enrollment, on the Electricity Facts Label, and on the customer's bill.

As the Commission is aware, a REP bills the customer for several components of service necessary to provide electricity to the end use customer: generation (i.e. electricity) expenses, transmission and distribution charges, ERCOT charges, and taxes (state, local, gross receipts, and the PUC Assessment). As we also know, TDU charges are regulated and governed by tariffs and include base charges and volumetric charges. Generation costs are set by the REPs based on their supply contracts and may include base charges and volumetric charges. Taxes are known and fixed by the various taxing entities. However ERCOT charges are a combination of costs that are known in advance and costs that are only known after the fact.

By including ancillary service charges in the list of recurring charges, the Commission is effectively prohibiting REPs from passing through the actual ancillary service charges the REP receives from ERCOT. Instead, REPs would have to absorb any deviations in such charges from the "fixed" amount it sets as part of its generation costs. In a sense, the Commission is forcing REPs to "bundle" ERCOT charges into its generation charges. While the CCR appreciates the Commission's concern that "fixed" should mean "fixed," by its very nature, a "price" (as that term is defined) is not "fixed" (except at a specific level of usage). Prior Commissions have understood that, effectively, REPs can only control the costs on a certain portion of the customer's bill (the energy/generation portion). The rules were structured to allow the competitive marketplace to determine which marketing methods were more effective vis-à-vis bundled or unbundled price presentations. TDU charges are pass-through and irrespective of whether a REP has presented a product in a bundled format. Further, §25.479(c)(4) requires all

REPs "to provide an itemization of charges, including non-bypassable charges, to the customer upon the customer's request and, to the extent the charges are consistent with the terms set out in paragraph (2) of this subsection, the terms shall be used in the itemization." In other words, all customers have the right to see the unbundled components of their bill, even if they were sold a bundled product.

The existing definition of "fixed rate product" allows REPs to pass through "actual changes in TDU charges, changes to the ERCOT or Texas Regional Entity administrative fees charged to loads, or changes resulting from federal, state, or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control." The intent of this language is to make clear that all these items are "beyond the REP's control." Also, the definition of "indexed product" also includes "regulatory actions" in the list of items that are beyond a REP's control.[2]

The proposed rule suggests that Ancillary Service Charges are not part of the ERCOT fees charged to loads, but rather a generation expense that is under the control of the REP, and hence something that could be "fixed." But Ancillary Services are not like energy, which is procured by the REP before it is needed; Ancillary Services are procured by ERCOT – the REPs have no control over the Ancillary Service market.

The CCR suggests that the definition of a "fixed rate product" be modified to more clearly disclose to customers what is actually "fixed" depending on whether the REP is marketing their product in a "bundled" or "unbundled" fashion. If a REP chooses to market a "fixed rate product" as "bundled," then what is "fixed" should be the "bundled" rate (i.e. the rate that reflects all components of service: generation + TDU charges + ERCOT charges. That REP would then be precluded from passing through increases to any of those components,

[2] 16 TAC §25.475(b)(6)

should they change. However, if a REP chooses to market its product in an unbundled manner, it should be allowed to state that the generation portion is "fixed" while the remaining elements are passed-through. Again, the confusion stems from describing the "price" as fixed rather than what components of the price are "fixed."

If the Commission intends to force REPs to offer a "fixed price" that includes all the recurring elements without allowing the REP to re-coup increased costs (like TDU rate changes), the Commission should understand either that very few REPs would choose to offer such products in the future, or that the prices of those products will increase to reflect the inability to make later adjustments.

As an alternative, the Commission could explore requiring REPs to simply present offers and bills in an unbundled fashion: generation, transmission & distribution, ERCOT, and taxes. This would allow REPs to clearly market generation as "fixed" while acknowledging that these other components can, and do, change.

(b)(8) – Price

The CCR does not object to the inclusion of ancillary services in the definition of price as it is an example of a recurring charge. The CCR notes, however, that the term "price" is used on the EFL to help customer's compare an "all-in" price so that customers can make an apples to apples comparison among REPs. Pursuant to the enrollment provisions in PUC SUBST. R. §25.474, the customer is also told the "price" when they enroll (and again depending on how the REP is presenting their offer, the customer may be told specific rate components as well). Finally, as required by the billing rule (§25.479), this same "price" is also calculated on a customer's bill so they have a means of seeing the "all-in" price on their bill and using that to evaluate EFL offers.

Again, the confusion of the proposed rule is in attempting to state that the "price" is "fixed" rather than spelling out the specific rate elements that comprise that price.

§25.475(c)(1) and (c)(2) and elsewhere throughout 25.475

As mentioned in the comments above for 25.475(b)(2) with respect to the definition of contract documents, the CCR would propose that this language be simplified to refer to "contract documents" in lieu of specifying each of the individual contract documents, like the TOS, YRAC, EFL, the AOR as these routinely exclude the PDS.

§25.475(c)(3)(G)

This sub-section should be deleted in its entirety as the proposed language exceeds the scope of provisions contained in HB 16. First, HB 16 only precluded residential and small commercial customers from enrolling in Wholesale Indexed Products, not other types of indexed products. The current language of §25.475(c)(3)(F) adequately addresses the scope of the HB 16 requirement.

HB 16 contained no authority for the Commission to limit what types of products in which a large commercial or industrial customer could enroll. Rather, it only specified that an Acknowledgement of Risk be obtained prior to enrolling on a Wholesale Indexed Product, not any indexed product, nor any other product that contains "a direct pass-through of ancillary service charges."

Finally, large commercial customers are sophisticated buyers that possess the ability to negotiate their own contract terms, and to understand the contract terms presented to them. There is simply no reason to extend additional protections to this class of customer beyond those authorized in HB 16.

§25.475(f)(7)

The Commission should clarify that the language proposed in §25.475(f)(7) meets the

requirements found in proposed new §25.475(c)(3)(D). If the proposed language does not meet the intent of the requirement found in §25.475(c)(3)(D), the CCR asks the Commission to clarify what additional information must be included to comply with the requirement found in §25.475(c)(3)(D).

Further, the CCR recommends revising this provision to be more consistent with the requirements found in proposed §25.475(e) as it relates to the timing of contract expiration notice delivery. Without changes, this provision could mislead customers into thinking that a more generic requirement exists that mandates expiration notices for all customer classes and product types will be sent at least 14 days prior to the end of the initial contract term. The CCR proposes the following alternative language:

> **(7) Contract expiration notice.** ~~For a term contract, t~~The TOS must contain a statement informing the customer of when they should expect to receive a contract expiration notice for the specific type of product in which they are enrolled and consistent with the provisions of subsection (e)(1) and (e)(2) of this section. The TOS must also state that if the customer fails to take action to ensure the continued receipt of retail electric service upon the contract's expiration, the customer will continue to be served by the REP automatically pursuant to a default renewal product, which must be a month-to-month product.

§25.475(j)

The CCR recommends this section be deleted as it goes beyond the scope of the prohibitions outlined in HB 16. However, if the Commission is determined to require customers to sign an Acknowledgment of Risk, the CCR would ask that the language be modified to allow for other methods for obtaining customer consent, beyond a signature, to the Acknowledgement of Risk. Our suggestion for accommodating other forms of customer consent are shown in the redline below:

> **(j) Acknowledgement of Risk.** Before a residential or small commercial customer's enrollment in an indexed product or a product that contains a separate assessment of ancillary service charges, an aggregator, broker, or retail electric

provider must obtain an AOR, ~~signed by the customer~~by means of one of the methods authorized in §25.474 of this title (relating to Selection of Retail Electric Provider), verifying that the customer accepts the potential price risks associated with the product.

V. COMMENTS ON §25.499

The CCR appreciates the Commission's efforts to delineate the requirements for larger commercial customers by placing these in a separate rule section.

25.499(d)

As discussed in our comments on 25.475(j) above, the CCR recommends that the proposed language in §25.499(d) be modified to allow for other methods for obtaining customer consent, beyond a signature, to the Acknowledgement of Risk. Our suggestion for accommodating other forms of customer consent is shown in the redline below:

(d) **Acknowledgement of Risk (AOR)** Before a customer other than a residential or small commercial customer is enrolled in a wholesale indexed product, or a product that contains a separate assessment of ancillary service charges, an agqregator. broker or REP must obtain an AOR, ~~signed by the customer~~by means of one of the methods authorized in §25.474 of this title (relating to Selection of Retail Electric Provider), verifying that the customer accepts the potential price risks associated with the product.

25.499(d)(2)

The CCR believes the Commission has exceed the scope of requirements contained in HB 16 by expanding the use of the Acknowledgement of Risk beyond wholesale indexed products, by including the requirement to obtain an AOR for products containing a separate assessment of ancillary services costs. As a result, the CCR recommends deleting the proposed requirement found in §25.499(d)(2) in its entirety.

VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Coalition of Competitive Retailers respectfully requests that the Commission publish a rule for adoption that reflects the comments above. . Additionally, we reserve the right to provide further comments on any proposed changes.

Respectfully Submitted,

By: 

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ATTORNEY FOR THE COALITION OF COMPETITIVE RETAILERS

Attachment One

Coalition of Competitive Retail Electric Providers Supporting These Comments

Background

The Coalition of Competitive Retailers is an ad hoc group of competitive Retail Electric Providers that joined together in its desire to address the market issues stemming from the February 2021 Winter Weather Emergency.

Participants in this filing:

Alliance Power Company LLC – certificate number 10074
AP Gas & Electric (TX) LLC – certificate number 10105
Brooklet Energy Distribution LLC – certificate number 10137
Eligo Energy TX LLC – certificate number 10246
Summer Energy LLC – certificate number 10205
Young Energy LLC – certificate number 10110